

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JOHN KELLEY, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as Secretary of Health and Human Services, et al.,

Defendants.

Case No. 4:20-cv-00283-O

Judge Reed O'Connor

UNOPPOSED MOTION OF THE STATES OF ILLINOIS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, THE DISTRICT OF COLUMBIA, HAWAII, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, AND WASHINGTON FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN SUPPORT OF THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO LOCAL RULE 7.2(b)

Movants (“Amici States”), through undersigned counsel, and pursuant to Federal Rule of Civil Procedure 7 and this Court’s Local Rule 7.2(b), move for leave to file the attached brief *amici curiae* in support of the Defendants’ Motion for Summary Judgment. Counsel for all parties have consented to this Motion and to the filing today of the attached brief *amici curiae*. This brief is being timely filed on the same day as the Defendants’ motion.

INTRODUCTION

Amici States, represented for the purpose of this motion by Illinois, through its Attorney General, are 21 States representing more than 160 million people. These States operate public health departments and have a vital interest in protecting the health and welfare of their citizens. This interest is substantially advanced by the challenged provisions of the Affordable Care Act,

and would be jeopardized if the court were to deny the Defendants' Motion for Summary Judgment.

ARGUMENT

District courts have broad discretion to accept *amicus* filings. *See, e.g., Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007); *see also Texas v. United States*, 2018 U.S. Dist. LEXIS 237337 (N.D. Tex. June 15, 2018) (O'Connor, J.) (granting leave to file four *amicus* briefs). *Amicus* filings should be allowed when “the proffered information is timely and useful or otherwise necessary to the administration of justice.” *Gudur*, 512 F. Supp. 2d at 927 (quoting *Waste Management Of Pa. v. City of New York*, 162 F.R.D. 34, 36-37 (M.D. Pa. 1995)).

Although there are no statutes or rules governing the acceptance of *amicus* briefs in federal district courts, courts have generally looked to the Federal Rules of Appellate Procedure for guidance. There, an *amicus curiae* must file its brief no more than seven days later than the filing of the principal brief it is supporting. Here, the proposed brief *amici curiae* is timely, as it has been presented to the court on the same day the Defendants filed their Motion for Summary Judgment.

Further, the brief is useful, as it brings to the attention of the court the impact that the Affordable Care Act’s preventive services provisions have had on States and their citizens. Amici States’ brief, submitted with this Motion, supports the position of the Defendants. However, Amici States provide additional information and context to supplement the Defendants’ Motion for Summary Judgment that they believe will be relevant and helpful to the court in making its decision. The brief discusses the positive impact of the challenged provisions on the States, and the public health and regulatory challenges that States would face if the court were to rule against the Defendants. The brief also discusses the merits of the legal claims advanced by the Plaintiffs.

As such, the attached brief *amici curiae* is useful, as it will inform the Court's effort to resolve the question before it.

CONCLUSION

Given the nationwide significance of this case, and its profound implications for the public health systems in States, movants respectfully request leave to file the accompanying brief *amici curiae* in support of the Defendants' Motion for Summary Judgment. A proposed order is attached to this motion and also will be emailed to chambers in word-processing format.

Date: January 28, 2022

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(b), I hereby certify that counsel for Amici States conferred with counsel for the Plaintiffs and counsel for the Defendants regarding filing this motion. Counsel for all parties indicated that they did not object.

/s/ Elizabeth Jordan
ELIZABETH JORDAN
Illinois Bar #6320871 (*pro hac vice*
motion pending)

CERTIFICATE OF SERVICE

Pursuant to Local Rule 5.1(d), I hereby certify that on January 28, 2022, I filed the foregoing document using the Court's CM/ECF system. Service on all counsel of record for all parties was accomplished electronically using the CM/ECF system of the Court.

/s/ Elizabeth Jordan
ELIZABETH JORDAN
Illinois Bar #6320871 (*pro hac vice*
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[PROPOSED] ORDER

Before the Court is the Amici States' Motion for Leave to File Brief Amicus Curiae (ECF No. ____), filed January 28, 2022. Having considered the motion, and noting that it is unopposed by the Parties, the Court finds that it should be and is hereby **GRANTED**. The Clerk is DIRECTED to file the Amici States' brief, now attached to their motion as ECF No. ____-____, as a separate docket entry.

SO ORDERED on this ____ day of _____, 2022.

Hon. Reed O'Connor
UNITED STATES DISTRICT JUDGE